

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:20-CR-00356-FDW-DSC**

UNITED STATES OF AMERICA,)
)
)
)
)
v.)
)
ANTONIO FRANKLIN CUNNINGHAM,)
)
)
Defendant.)

ORDER

THIS MATTER is before the Court on Defendant's pro se letter requesting new counsel (doc. 18) filed on July 9, 2021. The Court held a hearing in this matter on July 16, 2021.

The Court denied Defendant's previous Motion for inquiry of counsel (doc. 11) on June 7, 2021. In the present Motion (doc. 18), Defendant makes general complaints about appointed counsel Kevin Tate. He states that Mr. Tate has only visited him in the jail twice. Mr. Tate credibly represents that this is simply not true. Defendant also complains about his interactions with Mr. Tate during their visits. Of concern to the Court is that during one of the visits, Defendant became belligerent, slammed his fist against the glass opposite Mr. Tate, and called counsel a "bitch ass nigger." The Court has conducted an ex parte review of a letter from Mr. Tate to the Defendant dated June 30, 2021. In this letter, Mr. Tate provides Defendant with an overview of the evidence and a detailed analysis of his options including guidelines projections.

"Because the right to choose counsel is not absolute, it necessarily follows that a defendant does not have an absolute right to substitution of counsel. As a general rule, a defendant must

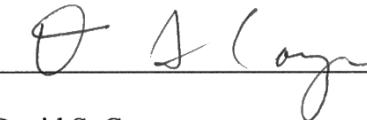
show good cause in requesting a new appointed lawyer.” United States v. Mullen, 32 F.3d 891, 895 (4th Cir. 1994).

The Court concludes that Mr. Tate is providing effective representation in this case. Defendant does not exercise veto power over appointment of counsel here. And the hard realities of his situation will not change with appointment of new counsel. But the level of hostility directed at counsel by the Defendant makes continued representation by Mr. Tate extremely problematic. The Court will grant the Motion and directs the Federal Defender to appoint new counsel.

The Clerk is directed to send copies of this Order to Assistant Federal Defender Kevin Tate, the Federal Defender’s office, the Government, and to the Honorable Frank D. Whitney.

SO ORDERED.

Signed: July 18, 2021



David S. Cayer
United States Magistrate Judge
